

tificate thus commencing proceeds to declare that "we did then act as judges of election at an election then held at the quarters of the commanding officer," and the necessary presumption and intendment coming in aid of all these general averments; if any aid is necessary, supply all that is necessary to show that, so acting as judges, they acted by competent authority. Were it not so it would be difficult to find any returns from any county in the State at this or any other election on file in this office that would not be obnoxious to the same or much graver objections. Indeed, the learned counsel who has presented these objections has been himself obliged to rely upon presumptions to supply defects in returns from several counties casting large majorities against the constitution, which have been made subjects of exception by the opposing counsel, and which I think furnish examples of irregularities quite as important, to say the least of them, as most of those suggested against the sufficiency of the military returns. Several of these make no statement of the time during which the polls were opened; in two cases they fail to show that the vote was by ballot—in one, instead of positively certifying, as they are required so explicitly to do, that every voter has taken the oath prescribed by the constitution, they only certify in the way of preamble that it so appears from the certificates made out at the district polls; and in another county the returns, instead of being made and directed to the governor, are made and directed to the clerk of the circuit court, and a certified copy enclosed by that officer. But I am of opinion that these returns being substantially correct, are entitled to the benefit of all reasonable presumptions to cure their defects; and surely, returns made in the field, and by officers who, as well as the county judges, are sworn to observe the law, ought not to be subject to any more rigid scrutiny.

The circumstances under which they were prepared entitle them to the most liberal construction, and the convention very justly looked to these circumstances in providing, as they did against all unimportant irregularities, by declaring "that no particular words shall be required."

I proceed to a brief notice of some particular objections applied to different returns of several companies, which, whilst they are generally, I think, within the reasons suggested against other objections taken, it may be proper to advert to, as they were of a more special description. The vote of company B, of 2d regiment of infantry, is objected to on the ground that the caption to the list of voters accompanying the return represents that the polls were opened at the quarters of "the judges." Adverting to the certificate of return itself, it will be found to recite that the election was "held at the quarters of the commanding officer of said company"—and

whilst the list of votes accompanying that certificate might be admitted to explain any ambiguity on its face, it cannot, without the signature of any official, be allowed to contradict the regular certificate of the judges made out under their hand and seal.

Objection is taken to the returns of company C, of 12th regiment infantry, upon the ground that it appears by a letter accompanying the return, that the polls were not opened until after the appointed hour, eight o'clock, A. M. The captain, however, distinctly states that though not opened at the hour required, "abundant time and opportunity were given to secure the entire vote of the company"—a fact that can scarcely be doubted when we perceive that the company polled twenty-three votes, and no other in the regiment, though apparently with the poll opened during the whole time required, voted more than twenty-eight. Under such circumstances, and with no complaint made that any member of the company lost his vote by reason of the delay, it would seem to be a most harsh and unreasonable proceeding to refuse to count the votes that were given. This view of the case is sustained too by the authority of the writer already quoted, who enumerates, among the irregularities insufficient to invalidate the proceedings, a case "where the opening of the meeting was delayed for two hours beyond the time fixed." The vote of company K, 1st regiment, P. H. B., is objected to on the ground that others not members of that company voted with it. The certificate of the judges show no such fact, but states the election to have been by the members of company K, but a letter accompanying it states that "the accompanying list of voters consist of members of company K, and a detachment of companies A, O and F, of same regiment, serving under the command of the officers of company K, the officers of companies A, C and F, having been mustered out of service." These men, therefore, were incorporated into company K. Companies A, O and F cast no vote, and these members of said companies, consolidated apparently with company K, had a right to vote at the quarters of that company, and even if they had not it would be as unreasonable to reject the whole vote of the company on such account as it would be to reject the vote of an entire election district because its poll-books showed that sundry illegal voters had participated in the election.

Objection is made to company H, 1st Potomac Home Brigade, upon the ground that twenty-three "blue tickets" are returned with the ballots, which I am asked to reject.

The objection is founded on the 9th section of the act of 1864, providing for the call of the convention, which directs that the ballots "shall be written or printed on white paper." The paper on which these twenty-three ballots were written is what is commonly known